IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1063 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

CHAMPAKLAL G BHAVSAR

Appearance:

MR KP RAWAL, APP for Appellant

MR G RAMAKRISHNAN for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

Date of decision: 01/10/2004

ORAL JUDGEMENT

Instant appeal filed under Section 378 of the Code of Criminal Procedure, 1973 is directed against judgment dated August 17, 1992 delivered by the learned

Additional Sessions Judge, Himmatnagar in Atrocity Case No.14 of 1992 by which the respondent is acquitted of the offences punishable under Sections 502, 506(2) of I.P.C. and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('Atrocity Act' for short).

2. Hirabhai Kodarbhai residing at village Vadali, District Sabarkantha was running a fair price shop. On March 31, 1992, he was going home after closing his shop at about 6.00 p.m.. At that time, the respondent met him and asked to give him sugar and rice. The respondent also stated that he would kill him if sugar and rice were not delivered to him. It was further stated by the respondent that he won a lottery of Rs.7 lakhs and, therefore, would kill Hirabhai who was an untouchable. He further asked Hirabhai to deliver the goods demanded by him at his residence and said that putting on bright and shining clothes would not make an untouchable, a respectable person. The respondent also abused Hirabhai. Therefore, Hirabhai submitted a written complaint on April 1, 1992 at 1730 hours before Pujaji Mavaji who was then Head Constable at Vadali Police Station. The Head Constable registered the offences against the respondent and handed over the complaint for investigation to Mr. P.M. Patel who was then P.S.I. of Vadali Police Station. After investigation, the Investigating Officer submitted chargesheet in the Sessions Court, Sabarkantha at Himmatnagar. The case was made over to learned Additional Sessions Judge, Himmatnagar for trial who framed charge against the respondent at Exh.6 of the offences punishable under Sections 504 and 506 of I.P.C. as well as Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The charge was read over and explained to the respondent who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined Hirabhai Kodarbhai as p.w.1 at Exh.10, Mohanbhai Kahiyabhai as p.w.2 at Exh.12, Ramchandrabhai Govabhai as p.w.3 at Exh.13, Amrutbhai Lallubhai as p.w.4 at Exh.14, Pujaji Mavaji as p.w.5 at Exh.16 and Prahladbhai Mancharambhai Patel as p.w.6 at Exh.17 to prove its case against the respondent. The prosecution also produced documentary evidence such as complaint lodged by Hirabhai at Exh.11, communication dated July 7, 1990 addressed by the original complainant to President, Vatapalli Education and Consumer Protection Association that he would make best attempts to minimise the difficulties of consumers at Mark 'A', panchnama of place of occurrence at Exh.15 etc. After recording of evidence of prosecution witnesses was over, the learned Judge

explained to the respondent the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement. In his further statement, the case of the respondent was that a totally false case was lodged against him. It was also his case that at the time of the incident, he was busy in the Office of Taluka Education Supervisor at Idar which indicated that a false case was filed against him. He also submitted a detailed written statement at Exh.19 contending inter alia that as Secretary of Consumer Protection Association, he had made several complaints against the original complainant and, therefore, complaint filed against him as a counterblast should be dismissed. In order to support his plea of alibi, the respondent examined Hargovindbhai Amthabhai as Defence witness No.1 at Exh.22.

3. On appreciation of evidence adduced by the prosecution, the learned Judge held that several admitted facts were denied by the original complainant which indicated that true and correct facts of the case were not presented by the complainant before the court. According to the learned Judge, the respondent had filed several complaints against the complainant with Mamlatdar as Secretary of Consumer Protection Association as the original complainant was indulging into several illegal activities including selling of essential articles in black market and, therefore, a false complaint was filed by the complainant against the respondent. The learned Judge further deduced that the plea of alibi stands probabilised by the reliable testimony of defence witness Hargovindbhai and it was not proved by the prosecution that on the day of incident, at about 6.00 p.m. the respondent misbehaved with the complainant, as alleged by the complainant. In view of above referred-to conclusions, the learned Judge has acquitted the respondent by judgment dated August 17, 1992 giving rise to instant appeal.

4. This court has reconsidered the whole evidence on record and heard Mr. K.P. Rawal, learned APP appearing for the State as well as Mr. G. Ramakrishnan, learned counsel of the respondent. The record of the case shows that the original complainant was member of Nadari Gram Panchayat which is quite evident from certificate dated July 26, 1992 issued by Sarpanch, Nadari Gram Panchayat produced on record of the case as Exh.20/15. Therefore, as per the word, complainant is a politician. The record further shows that his brother whose name is Chhaganbhai is a Congress worker wielding influence in the area. The application dated February 10, 1992 submitted by one Mr.

Prabhudas Parmar would indicate that though he was eligible for licence to run fair price shop at Vadali, he was not granted licence but the complainant was granted licence because of influence of Chhaganbhai regarding which he had made grievance before the President of Consumer Protection Association, Himmatnagar. This application is on the record of the case at Exh.20/10. The application dated February 11, 1992 submitted by President, Consumer Protection Association, Sabarkantha to Deputy Mamlatdar, Vadali would indicate that an attempt was made to sell two sacks of wheat in black market which was foiled by the respondent and by the said letter, the President of Consumer Protection Association had requested the Deputy Mamlatdar to take action against the complainant. The document produced at Mark 'A' would indicate that the complainant assured the President of Consumer Protection Association that he would behave properly and would make all attempts to remove the difficulties being faced by consumers and that complaint lodged by the Association against him before the Mamlatdar be withdrawn. The record also shows that in view of this assurance given by the complainant, the Association had withdrawn the complaint lodged by it before the Mamlatdar. It may be stated that the grievance of about 60 poor and illiterate consumers was that the quota meant for them was never allotted to them by the complainant and that most of the time, the complainant was keeping fair price shop closed. The reliable testimony of defence witness Hargovindbhai examined at Exh.22 indicates that on the date of incident, the respondent was in his office up to 6.30 p.m.. The reliable testimony of witness Hargovindbhai establishes that the respondent was not present at the time and place of incident at all. It is relevant to notice that though the incident took place on March 31, 1992, the original complainant presented written complaint on April 1, 1992 at 5.30 p.m. before Head Constable of Vadali Police Station and no satisfactory explanation is offered by the complainant as to why the complaint was lodged after delay of about 19 hours. There is no manner of doubt that in order to deter the respondent, who was pointing out illegalities committed by the complainant to the Mamlatdar for protection of consumers, from proceeding with those complaints and in order to teach him a lesson, a false complaint was filed. Even obvious facts such as his signature on the letter requesting the President of Consumer Protection Association to withdraw the complaint filed before Mamlatdar, Vadali was denied and the learned Judge had to record a finding that the said letter was bearing the signature of the complainant after comparing the disputed

signature of the complainant with admitted signature of the complainant, in exercise of powers conferred on him by Section 73 of the Indian Evidence Act. There is no manner of doubt that material facts were suppressed by the complainant and a false case was lodged against the respondent, who was a teacher by profession with a view to humiliating him. The learned Judge of the Trial Court has disbelieved the witnesses examined by the prosecution and recorded cogent reasons for acquitting the respondent and the learned APP has failed to dislodge the same. The view taken by the learned Judge on the evidence on record cannot be termed as arbitrary or unrealistic so as to warrant interference of this court in instant appeal. The appeal is, therefore, liable to be dismissed.

5. Before passing the final order, it may be stated that learned A.P.P. sought direction against the complainant to refund financial assistance rendered to him after lodging complaint at police station. It is relevant to notice that pursuant to Resolution dated November 18, 1995 of the Government of Gujarat, Social Welfare and Tribal Development Department, Sachivalaya, Gandhinagar read with Rule 12(4) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, appropriate financial assistance must have been given to the original complainant. As the complaint has been found to be false and frivolous, it would be open to the Government to recover the same from the complainant in accordance with law. Subject to aforesaid observation, the appeal fails and is dismissed.

(J.M. Panchal, J.)

hki